

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

HOMEGROCER.COM, A WHOLLY OWNED
SUBSIDIARY OF WEBVAN GROUP, INC.¹

Employer

and

Case 21-RC-20281

GENERAL TRUCK DRIVERS, OFFICE,
FOOD & WAREHOUSE, LOCAL 952,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and seeks to represent certain employees of the Employer.

¹ The name of the Employer appears as amended at the hearing.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, loaders, inbound associates and loader leads, employed by the Employer at its facility located at 10 Whatney, Irvine, California; excluding all other employees, office clerical employees, guards and supervisors as defined by the Act.

The Petitioner seeks to represent a unit of employees, as amended at the hearing, comprised of all full-time and regular part-time drivers, loaders, inbound associates, loader leads employed by the Employer at its Fullerton satellite facility located at 10 Whatney, Irvine, California, excluding office clerical employees, guards and supervisors as defined by the Act.

The Employer argues that the only appropriate bargaining unit must consist of all full-time and part-time drivers, personal shoppers, personal shopper leads, loaders, loader leads, inbound associates, inbound leads, buyers and routers at the Employer's Fullerton facility located at 590 Gilbert, Fullerton, California and the Irvine satellite facility located at 10 Whatney, Irvine. There are 38 employees regularly assigned to work at the Irvine facility and 306 employees regularly assigned to work at the Fullerton facility.²

The Employer, an internet retail company, is engaged in selling groceries and other general merchandise through customer orders made on the

Company's web site. All customer orders are processed at the Company's headquarters in Kirkland, Washington and routed, depending on the zip code, to one of the Company's six customer fulfillment centers (hereinafter called "CFC") located in Carson, California; Azusa, California; Fullerton, California; San Diego, California; Renton, Washington; and Dallas, Texas. Thereafter, the customer orders are filled at the CFC and delivered directly to the customers' homes by Employer drivers in Company trucks. In addition, the Employer maintains two cross docks, or "satellite facilities", located in Portland, Oregon and Irvine, California.

All six of the Company's CFCs have the same equipment and operate like a grocery store with a distribution department. The Fullerton CFC, like all Employer CFCs, has a warehouse area which stores baked goods, refrigerated and frozen foods, produce and nonperishable products. In addition, there is a delivery department, a personal shopper department, an inbound department, a human resources department and a marketing department.

From about August 1999 to November 15, 2000, the Irvine facility functioned as an independent CFC. The record reflects that on October 23, 2000, the Employer decided that Irvine would no longer operate as a CFC and instead would exist only as a satellite to the Fullerton facility. On November 15, 2000, the Employer's Irvine facility stopped serving as a CFC and began a cross operation on November 16, 2000. Thus, all merchandise was removed from the Irvine facility. Unlike the Fullerton CFC, the Irvine facility hereinafter conducts no shopping, buying, or accounting. Rather, the Irvine facility's only function is to receive, distribute, load and deliver products. As a result of the switch in business operations, the Employer laid off 120 employees at the Irvine facility. The 38 employees that remain consist of drivers, inbound associates and loaders. The record

² Both parties submitted timely briefs in support of their positions.

discloses that the distance between the Irvine and Fullerton facilities is about 20 miles.

There are approximately 26 drivers, 10 loaders, and two inbound associates employed at the Irvine facility. In addition, there are three supervisors operating out of Irvine: Ramon Smith (hereinafter "Smith") is the delivery supervisor; and Dean Murada (hereinafter "Murada") and Dana Argust (hereinafter "Argust") are loading supervisors. Smith's immediate supervisor is Delivery Manager Kevin O'Cooney who is located in Fullerton.

The record discloses that supervision at the Irvine facility is handled by specific supervisors. Smith, the delivery supervisor at Irvine, is solely responsible for sending the drivers out and closing the facility at the end of the day. Murada and Argust supervise the loaders and inbound receivers.

The record discloses that supervisors at Irvine directly discipline employees. In addition, drivers submit vacation requests to Supervisor Smith. The record discloses that Irvine drivers were not interviewed by any representative of the human resources office, but rather were interviewed by Antonio Alvarado, (hereinafter "Alvarado") former delivery manager at Irvine. Due to the Employer's restructuring, Alvarado transferred to the Azusa facility and Irvine now operates with a delivery supervisor instead of a driver delivery manager. The record also discloses that drivers seek assistance from Smith for problems encountered in the course of making deliveries, and that they are discouraged from contacting personnel at the Fullerton CFC.

The record discloses that Martin Mercado (hereinafter called, "Mercado") is the director of operations for both the Fullerton CFC and the Irvine facility. Mercado maintains an office at both locations, and at the

time of the hearing, he was spending 2 to 3 days in Irvine.³ The record reveals that he makes all the hiring decisions and is responsible for addressing disciplinary concerns.

The record discloses that as a satellite, the Irvine facility receives delivery of merchandise from the Fullerton CFC three or four times a day. Thus, orders to be delivered out of Irvine are segregated at Fullerton, and are placed in a semi truck for delivery to Irvine.

As noted above, there are approximately 26 drivers employed at the Irvine facility. Drivers are either scheduled to work the morning shift from 7:30 a.m. to 4:00 p.m. or the night shift from 1:30 p.m. to 10:00 p.m. Drivers conduct a pre-trip inspection of their trucks before starting their deliveries. They conduct an audit of the truck and assure that the merchandise, also referred to as "totes", is contained in the truck. The drivers also check to see that the totes reflect what is written in the manifest. The manifest is a list that contains the deliveries and totes for the day, which is placed in each driver work- mailbox. Drivers are not required to have a specialized driver's license, and have a common class C driver's license.

There are approximately 10 loaders employed at the Irvine facility. Loaders work from 5:30 a.m. to 2:30 p.m. The loaders load the totes onto the delivery trucks. Loaders also assist the Fullerton driver in unloading the trailer truck and transferring the merchandise onto the Irvine trucks. Loaders work Monday through Friday.

There are two inbound associates at the Irvine facility. Inbound associates work from 6:00 a.m. to 3:00 p.m. The record indicates that inbound associates receive the merchandise transported from Fullerton and assist in directing the product to the appropriate Irvine delivery truck which was previously designated by the Fullerton CFC routers.

³Mercado was spending an unusually large amount of time at the Irvine facility so as to oversee its transition from a CFC to a satellite facility.

Drivers, loaders and inbound associates at the Irvine and Fullerton facilities, as well as at the other Employer facilities, are paid on an hourly basis and operate under the same wage scale. Drivers earn \$13 per hour, loaders earn \$10 per hour, and inbound associates earn \$10 per hour. Employees on a corporate-wide basis are entitled to the same benefits including health insurance, participation in the Employer's 401(k) plan, and stock options. All employees are subject to the Employer's employee handbook which governs the procedure for requesting vacation time and leaves of absence.

The record reflects that during the company's busy seasons, the Employer transfers drivers from the Irvine facility to the Fullerton facility, or vice versa, depending on the operational needs. However, any employee has the right to refuse the temporary transfer. The record reveals that in the past year, there have been 16 permanent transfers between the Irvine and the Fullerton facilities.

There is little contact between the Fullerton and Irvine employees. The record indicates that drivers do not contact Fullerton personnel when they encounter problems with their routes. Rather, the delivery supervisor is contacted. Irvine employees punch-in at the Irvine facility and Fullerton employees punch-in at the Fullerton facility. The only regular employee contact between Fullerton and Irvine is through semi-driver Louis.⁴ Louis is responsible for bringing the merchandise from Fullerton to Irvine. Louis performs his duties in the day, so the night shift Irvine drivers have no contact with him. The Irvine loaders and inbound receivers assist Louis in transferring the goods from his truck and into the Irvine facility.

The record discloses that all drivers at the Irvine and Fullerton facilities possess the same skills, and perform similar job functions. The

only exception is that Fullerton driver Louis possesses a class A driver's license to operate the semi truck. Loaders at both facilities perform the same tasks of loading and unloading the trucks. Although both facilities have inbound receivers, the inbound receivers at Fullerton perform additional job tasks because it is a CFC and the Irvine facility does not store merchandise. Unlike the Fullerton facility, Irvine has no personal shoppers, personal shopper leads, routers, buyers, or inbound leads. The record reveals no history of collective bargaining.

In Britain Transportation Co., 330 NLRB No. 57 (1999), the Board reiterated the applicable standard in determining appropriate units in multi-facility operations such as the one under consideration herein. The Board noted as follows:

A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. D&L Transportation, Inc., 324 NLRB 160 (1997). To rebut this presumption, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. J&L Plate, supra; Bowie Hall Trucking, 290 NLRB 41 (1988); D&L Transportation, Inc., 324 NLRB 160 (1997); Esco Corp., 298 NLRB 837, 839 (1990).

The record discloses that the Employer has, to a certain extent, centralized its labor relations in that apparently employees at all locations enjoy the same benefits. In addition, the Employer centrally sets the base wage rates for all employees. The Employer maintains ultimate centralized control over the hiring and firing of employees. Centralized control over personnel and labor relations alone, however, is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations. Britain, supra at 1.

⁴ The record fails to disclose the last name of this individual.

In Esco Corporation, 298 NLRB No. 120 (June 20, 1990), the Board was confronted by a situation similar to the instant case. In that case, the Board found that, as is the case in present scenario, there was centralized administration and labor relations policy among the Employer's various facilities. However, the Board concluded that the centralization of operations and labor relations, limited local autonomy and the common skills and functions of the employees at all three locations, did not overcome the lack of regular and substantial interchange or contact between the various groups of employees considered and the great distances between the various locations.

The record discloses that there is a lack of significant employee interchange between the employees at the Irvine and Fullerton facilities. The record reflects that there were 16 permanent transfers in the past year, however, permanent transfers are a less significant indication of actual interchange than temporary movement. Red Lobster, 300 NLRB 908 (1990). The record reflects that the Employer transfers employees from one facility to another during periods of heavy business. However, employees have the right to refuse the transfer. Such voluntary interchange is given less weight in determining if employees from different locations share common identity. D&L Transportation, 324 NLRB at 162 fn.7. Under these circumstances, the extent and regularity of temporary transfers is not so substantial as to negate the appropriateness of a separate unit. Red Lobster at 910.

Additionally, the distance between the Irvine facility and the Fullerton facility is about 20 miles. In Red Lobster, the union was seeking to represent a single-store unit, where the average distance among the Employer's stores was about seven miles. The Board concluded that the Red Lobster restaurants were not geographically proximate to each other, which rendered the likelihood of employee interchange between the locations unlikely. The same is true in the present case where the distance is about

20 miles and there is little history of interchange. Contrary to the Employer's contention, the 20 mile distance is significant and this separation serves to strengthen the presumption favoring a single facility unit. Ohio Valley Supermarkets, 323 NLRB 665 (1997).

Finally, I also note that there is no bargaining history of, or any request for, representation on a broader basis, which weighs in favor of finding the single-location unit appropriate. Renzetti's Market, 238 NLRB 174, 176 (1978).

Accordingly, based on the above-noted considerations and the record as a whole, I find that the Employer has failed to rebut the presumption that a single-location unit is an appropriate unit for bargaining purposes. I therefore find that the petitioned-for bargaining unit is an appropriate unit for the purposes of collective bargaining. D&L Transportation, supra; Red Lobster, supra; Esco Corporation, supra.

There are approximately 38 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are those employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who

have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **GENERAL TRUCK DRIVERS, OFFICE, FOOD & WAREHOUSE, LOCAL 952, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters in the unit and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, California 90017, on or before December 14, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement herein imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should

proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by December 21, 2000.

DATED at Los Angeles, California, this 7th day of December, 2000.

/s/James F. Small
JAMES F. SMALL
Acting Regional Director, Region 21
National Labor Relations Board

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